on an appeal bond. *Opp.* v. *Ward* (1890) 125 Ind. 241, 24 N. E. 974; *Culliford* v. *Walser* (1899) 158 N. Y. 65, 52 N. E. 648; *contra, Rosenbaum* v. *Goodman* (1883) 78 Va. 121. The principal case is in accord with the weight of authority and would seem to be sound.

TELEGRAPH COMPANIES—DUTY TO SEND BY RIVAL LINE.—A death message was accepted by the defendant company at X, addressed to the plaintiff at Z. The defendant, having no office at Z, customarily made connections from Y by an allied telephone company. The message was forwarded from Y by mail, because telephone service had been discontinued, although connections with Z could have been made through a rival telegraph company. *Held,* the defendant was negligent in not forwarding by the rival line. *Western Union Tel. Co.* v. *Teague* (Miss. 1918) 77 So. 302.

The responsibility of a telegraph company for the transmission of messages is analogous to that of a common carrier; the former, however, is not subject to an insurer's liability, being held only to the exercise of due care. Jones, Telegraph and Telephone (2nd ed.) § 270. The terms of the contract in the principal case are not clearly stated. If the defendant agreed to deliver to the telephone company as a connecting line, its liability was limited to delays occurring on its own line, Jones, *op. cit.* § 447; *Smith* v. *Western Union Tel. Co.* (1892) 84 Tex. 359, 19 S. W. 441, but it was bound to notify the sender of the connecting company's inability to forward. See *Western Union Tel. Co.* v. *Sorsby* (1902) 29 Tex. Civ. App. 345, 69 S. W. 122. But if, as seems probable, the defendant undertook to deliver at Z, it should be held to a strict performance of this agreement, whether, under the facts, the telephone company be a connecting line, Jones, *op. cit.* § 452; see *Western Union Tel. Co.* v. *Stratemeier* (1892) 6 Ind. App. 125, 32 N. E. 871; *cf. Northern Pac. Ry.* v. *American Trading Co.* (1904) 195 U. S. 439, 25 Sup. Ct. 84, an extension of the defendant's own system, *Western Union Tel. Co.* v. *Hargrove* (1896) 14 Tex. Civ. App. 79, 36 S. W. 1077, or a medium of delivery. *Western Union Tel. Co.* v. *O'Keefe* (Tex. 1895) 29 S. W. 1137; but *cf. King* v. *Western Union Tel. Co.* (1909) 89 Ark. 402, 117 S. W. 521; *Cumberland Tel. & Tel. Co.* v. *Atherton* (1906) 122 Ky. 154, 91 S. W. 257. Another route being open, its duty was an alternative one, either to notify the sender, *Swan* v. *Western Union Tel. Co.* (C. C. A. 1904) 129 Fed. 318, or to forward by the best available route, whether this was over its own lines or over a rival line. *Fleischner* v. *Pacific Postal Tel. Cable Co.* (C. C. 1893) 55 Fed. 738, aff'd. 66 Fed. 899. The most probable interpretation of the facts in the principal case is to consider the contract as calling for delivery at Z, and to regard the telephone company as an extension of the defendant's own system. But, upon whatever theory the decision rests, the defendant's liability seems clear, since the message had not left its own line, and the sender was not notified of the delay.

TRUSTS—STATUTE OF FRAUDS—PAROL TRUST IN PROCEEDS OF REALTY.—The plaintiff's father conveyed land by deed absolute to the defendant's testatrix, who agreed to hold the land in trust for her own benefit during her life, and after her death it was to go to the plaintiff; and if she sold the land, to hold the principal in trust for the plaintiff, who should get it on her death. The testatrix sold the land, and the plaintiff now brings a bill against her executor. *Held,* where land is conveyed on parol trust to hold the proceeds, and the land is sold, the

statute of frauds is no defense, and the trust will be enforced. *Chace* v. *Gardner* (Mass. 1917) 117 N. E. 841.

Where land is conveyed under a parol promise that it be held in trust, the statute of frauds will prevent the enforcement of the trust. *Fillingham* v. *Nichols* (1900) 108 Wis. 49, 84 N. W. 15; Perry, Trusts (6th ed.) § 79. But equity will generally permit the grantor to recover the property on the theory of unjust enrichment. *Greenley* v. *Shelmidine* (1903) 83 App. Div. 559, 82 N. Y. Supp. 176; see *Goldsmith* v. *Goldsmith* (1895) 145 N. Y. 313, 39 N. E. 1067. Hence it ought to permit the recovery of the proceeds on the same theory. *Greenley* v. *Shelmidine, supra.* If there is an express oral agreement to sell the land and hold the proceeds in trust, equity will not force the grantee to make the sale, since a contract to sell lands is also within the Statute of Frauds. *Walters* v. *Walters* (1916) 172 N. C. 328, 90 S. E. 304; see *Bork* v. *Martin* (1892) 132 N. Y. 280, 30 N. E. 584. But if the lands have already been sold at the time the beneficiary files his bill, most courts have enforced the agreement as to the proceeds as an oral trust of personalty. *Logan* v. *Brown* (1908) 20 Okla. 334, 95 Pac. 441; *Talbott* v. *Barber* (1894) 11 Ind. App. 1, 38 N. E. 487; *Bork* v. *Martin, supra.* This latter agreement can stand entirely on its own feet, and the case falls within the general rule that where that part of an agreement which is within the Statute of Frauds has been performed, the statute no longer applies. *Cf. Zwicker* v. *Gardner* (1912) 213 Mass. 95, 99 N. E. 949. But some courts hold that the agreement is an attempt to create an oral trust in lands, or a contract for the sale of lands, and refuse to enforce a trust as to the proceeds. *Johnson* v. *McKenzie* (1916) 80 Ore. 160, 156 Pac. 791; *Grantham* v. *Conner* (1916) 97 Kan. 150, 154 Pac. 246; *White* v. *McKenzie* (1916) 193 Mich. 189, 159 N. W. 367. If however the grantor voluntarily declares himself a trustee of his own lands, and agrees to hold the proceeds of the land in trust, a different situation arises. While equity will enforce a voluntary trust which is completely declared, *Watson* v. *Payne* (1910) 143 Mo. App. 721, 128 S. W. 238, it will not compel the trustee to create the trust. Since there is no enforceable trust as to the land, and the promise as to the proceeds is without consideration, it would seem that the promisor should be allowed to repudiate at any time before selling the land, as otherwise equity would be in effect compelling the creation of the trust. Nor would it seem that the mere sale of the land without prior declaration of revocation should be considered as creating an enforceable trust of the proceeds. Since the trustee is not bound to perform, there must be proof that he did perform, and the mere sale of the property and receipt of the proceeds would hardly be sufficient evidence. But where the trustee keeps the proceeds as a fund apart from the remainder of his property, or in any other way shows that he is holding the proceeds as a trust fund, it would seem that a valid enforceable trust had arisen. See *Watson* v. *Payne, supra.*

WORKMEN'S COMPENSATION ACTS—CASUAL AND EMERGENCY EMPLOYEES HIRED BY OTHER EMPLOYEES.—The defendant's driver, in the course of his employment, requested the plaintiff to assist him in removing his wagon from the mire and while so engaged the plaintiff was injured. *Held,* an emergency existed sufficient to give the driver authority to employ the plaintiff and, since the service, though casual, was in the usual course of the master's business, the defendant was liable under the